

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In Re:

TANVEER A. KHAN

Debtor(s)

Case No. 16-14863

Chapter 13

Honorable Judge Donald R. Cassling

NOTICE OF MOTION

To: Glenn B. Stearns, Chapter 13 Trustee (via Electronic Case Filing)
Motorola Employee Credit Union Attention: Christine M. Ryan/ Esp Kreuzer Cores LLP, 400 S. County Farm Road, Ste. 200, Wheaton, IL 60187 (notice per proof of claim filed by Motorola Employee Credit Union) and Steven C. Lindberg, Anselmo, Lindberg Oliver LLC 1771 W. Diehl Road, Suite 120, Naperville, IL 60563 (notice per Appearance filed [Doc. # 15]).

PLEASE TAKE NOTICE that on November 4, 2016 at 9:30 a.m., the undersigned will appear before the Honorable Judge Donald R. Cassling at Kane County Courthouse 100 S 3rd Street, Room 240 Geneva, IL, and will then and there present **DEBTOR'S MOTION PURSUANT TO 11 U.S.C. § 506(a) AND BANKRUPTCY RULE 3012 TO DETERMINE THE VALUE OF 2321 LOOP ROAD, ALGONQUIN, IL 60102 AND AVOID THE LIEN OF MOTOROLA EMPLOYEE CREDIT UNION at which time you may appear if you so choose.**

CERTIFICATE OF SERVICE

I, James J. Haller, hereby certify that I caused a copy of this notice and motion to be served, via electronic case filing to Glenn B. Stearns, Chapter 13 Trustee (via Electronic Case Filing) and Motorola Employee Credit Union by serving by regular first class mail Christine M. Ryan/ Esp Kreuzer Cores LLP, 400 S. County Farm Road, Ste. 200, Wheaton, IL 60187 (notice per proof of claim filed by Motorola Employee Credit Union) and via electronic case filing to Steven C. Lindberg, Anselmo, Lindberg Oliver LLC 1771 W. Diehl Road, Suite 120, Naperville, IL 60563 (notice per Appearance filed [Doc. # 15]) on September 29, 2016 on or before the hour of 5:00 p.m. from the office located at 900 Jorie Boulevard, Suite 150, Oak Brook, Illinois 60523.

/s/ James J. Haller

James J. Haller (6226796)
SULAIMAN LAW GROUP, LTD.
900 Jorie Boulevard, Suite 150
Oak Brook, Illinois 60523
Telephone: (630)575-8181

Label Matrix for local noticing
0752-1
Case 16-14863
Northern District of Illinois
Chicago
Thu Sep 29 16:13:19 CDT 2016

Capital One Auto Finance
P.O. BOX 201347
ARLINGTON, TX 76006-1347

U.S. Bankruptcy Court
Eastern Division
219 S Dearborn
7th Floor
Chicago, IL 60604-1702

Ally Bank
PO Box 130424
Roseville MN 55113-0004

Ally Financial
200 Renaissance Center
Detroit, MI 48243-1300

Ally Financial
PO Box 380901
Bloomington, MN 55438-0901

Ally Financial
PO Box 9001951
Louisville, KY 40290-1951

Avant Credit, Inc
640 N. LaSalle St., Suite 535
Chicago, IL 60654-3731

Barclays Bank Delaware
PO Box 8801
Wilmington, DE 19899-8801

Cadence Health
25 North Winfield Road
Winfield, IL 60190

Cadence Health
25960 Network Place
Chicago, IL 60673-1259

Cadence Health
27W353 Jewell Rd.
Winfield, IL 60190-1960

Capital One
PO Box 30285
Salt Lake City, UT 84130-0285

Capital One Auto Finance
7933 Preston Rd.
Plano, TX 75024-2302

Capital One Auto Finance
c/o Ascension Capital Group
P.O. Box 201347
Arlington, TX 76006-1347

Capital One Auto Finance, a division of Capi
P.O. Box 201347
Arlington, TX 76006-1347

Capital One Bank (USA), N.A.
PO Box 71083
Charlotte, NC 28272-1083

CarMax Business Services LLC
225 Chastain Meadows Court
Kennesaw, GA 30144-5897

Carmax Auto Finance
12800 Tuckahoe Creek Parkway
Richmond, VA 23238-1124

Carmax Auto Finance/CAF
Attn: Bankruptcy
PO Box 440609
Kennesaw, GA 30160-9511

Christine M. Ryan/Esp Kreuser Cores, LLP
400 S. Country Rd
Wheaton, IL 60187

Credit First/CFNA
Bk13 Credit Operations
PO Box 818011
Cleveland, OH 44181-8011

Equifax Information Services, LLC
1550 Peachtree St. NW
Atlanta, GA 30309

Experian Information Solutions, Inc.
475 Anton Blvd.
Costa Mesa, CA 92626-7037

Firestone
Credit First National Assoc
PO Box 81315
Cleveland, OH 44181-0315

Illinois Department of Revenue
Bankruptcy Section
PO Box 64338
Chicago, IL 60664-0338

(p)INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATIONS
PO BOX 7346
PHILADELPHIA PA 19101-7346

(p)JEFFERSON CAPITAL SYSTEMS LLC
PO BOX 7999
SAINT CLOUD MN 56302-7999

Kane County Clerk
719 S. Batavia Avenue
Geneva, IL 60134-3000

Kane County State's Attorney
37W777 Illinois Route 38
Saint Charles, IL 60175-7535

Kane County Treasurer
719 S. Batavia Ave.
Building A
Geneva, IL 60134-3079

Kane County Treasurer
PO Box 4025
Geneva, IL 60134-4025

LVNV Funding, LLC its successors and assigns
assignee of LendingClub Corporation &
LC Trust I
Resurgent Capital Services
PO Box 10587
Greenville, SC 29603-0587

Lending Club Corp
71 Stevenson St., Suite 300
San Francisco, CA 94105-2985

MERRICK BANK
Resurgent Capital Services
PO Box 10368
Greenville, SC 29603-0368

MIDLAND FUNDING LLC
PO Box 2011
Warren, MI 48090-2011

Merrick Bank/Geico Card
PO Box 23356
Pittsburg, PA 15222-6356

Motorola
Po Box 68429
Schaumburg, IL 60168-0429

Motorola Employee Credit Union
1205 E. Algonquin Rd.
Schaumburg, IL 60196-1065

Motorola Employees Credit Union
Christine M Ryan/Esp Kreuzer Cores LLP
400 S County Farm Road Ste 200
Wheaton, IL 60187

Navient
Attn: Claims Dept
PO Box 9500
Wilkes-Barr, PA 18773-9500

Navient Solutions, Inc. on behalf of USAF
Attn: Bankruptcy Litigation Unit E3149
P.O. Box 9430
Wilkes-Barre, PA 18773-9430

(p)PORTFOLIO RECOVERY ASSOCIATES LLC
PO BOX 41067
NORFOLK VA 23541-1067

Synchrony Bank/JC Penneys
Attn: Bankruptcy
PO Box 103104
Roswell, GA 30076-9104

Synchrony Bank/Money Sport
Attn:Bankruptcy
PO Box 103104
Roswell, GA 30076-9104

Synchrony Bank/Walmart
Attn: Bankruptcy
PO Box 103104
Roswell, GA 30076-9104

Trans Union LLC
PO Box 2000
Chester, PA 19022-2000

US DEPT OF EDUCATION
CLAIMS FILING UNIT
PO BOX 8973
MADISON WI 53708-8973

Us Dept of Ed/Great Lakes Educational Lo
2401 International
Madison, WI 53704-3121

Willoughby Farms Estates Neighborhood As
C/O RA Robert P. Nesbit
175 North Archer
Mundelein, IL 60060-2301

Willoughby Farms Master Association
2587 Millenium Dr., Suite H
Elgin, IL 60124-5826

Willoughby Farms Master Association
C/O RA Tressler Corporate Services, Inc.
305 W. Briarcliff Road Suite 201
Bolingbrook, IL 60440-2845

Glenn B Stearns
801 Warrenville Road Suite 650
Lisle, IL 60532-4350

Joseph S Davidson
Sulaiman Law Group, Ltd.
900 Jorie Boulevard
Suite 150
Oak Brook, IL 60523-3810

Patrick S Layng
Office of the U.S. Trustee, Region 11
219 S Dearborn St
Room 873
Chicago, IL 60604-2027

Tanveer A Khan
2321 Loop Rd.
Algonquin, IL 60102-6648

Internal Revenue Service

Centralized Insolvency Operation

PO Box 21126

Philadelphia, PA 19114-0326

Jefferson Capital Systems LLC

Purchased From Avant, Inc

Po Box 7999

Saint Cloud Mn 56302-9617

Orig By: Webbank

Portfolio Recovery Associates, LLC

Successor to

BARCLAYS BANK DELAWARE

(AADVANTAGE AVIATOR RED)

POB 41067

Norfolk, VA 23541

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Motorola Employees Credit Union

End of Label Matrix

Mailable recipients 55

Bypassed recipients 1

Total 56

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In Re:

TANVEER A. KHAN

Debtor(s)

Case No. 16-14863

Chapter 13

Honorable Judge Donald R. Cassling

**DEBTOR'S MOTION PURSUANT TO 11 U.S.C. § 506(a) AND BANKRUPTCY RULE 3012
TO DETERMINE THE VALUE OF 2321 LOOP ROAD, ALGONQUIN, IL 60102 AND
AVOID THE LIEN OF MOTOROLA EMPLOYEE CREDIT UNION**

NOW COMES, TANVEER A. KHAN (hereinafter "Debtor"), by and through his attorneys, Sulaiman Law Group, LTD., and pursuant to 11 U.S.C §506(a) and Federal Bankruptcy Rule 3012, moves this Honorable Court to determine the fair market value of the real estate commonly known as 2321 Loop Road, Algonquin, Illinois 60102 and avoid lien of Motorola Employee Credit Union, and in support thereof states the following:

1. This is a motion brought by the Debtor pursuant to 11 U.S.C. § 506(a) and Rule 3012 of the Federal Rules of Bankruptcy Procedure to determine the value of the real estate commonly known as 2321 Loop Road, Algonquin, Illinois 60102 and to avoid the lien of Motorola Employee Credit Union.

2. The Debtor alleges that this is a core proceeding as that term is defined by Section 157(b)(2) of Title 28 of the United States Code in that it concerns claims and matters arising out of the administration of this bankruptcy case and rights duly established under Title 11 of the United States Code and other applicable federal law.

3. The Debtor further alleges that this Court has both personal and subject matter jurisdiction to hear this case pursuant to Section 1334 of Title 28 of the United States Code, Section 157(b)(2) of Title 228 of the United States Code.

4. The underlying Chapter 13 bankruptcy case was commenced by the filing of a voluntary petition with the Clerk of this Court on April 30, 2016.

5. Upon information and belief, Motorola Employee Credit Union (“MECU”) lends money in the State of Illinois.

6. The Debtor is the owner of the real estate (“real estate”) commonly known as 2321 Loop Road, Algonquin, Illinois 60102.

7. At the time of the filing of the instant Chapter 13 proceeding, the fair market of the real estate was \$316,000.00. *See* attached Exhibit A is a true and accurate copy of an appraisal conducted by Jonathan E. Gutstein, Certified Residential Appraiser.

8. Upon information and belief, MECU has an interest in the real estate as a result of a first and second mortgage.

9. Upon information and belief, the balance of the debt owed to MECU on the first mortgage is \$354,979.08. *See* attached Exhibit B is a true and accurate copy of the Complaint to Foreclose Mortgage filed on or about March 18, 2016 in the Circuit Court of Kane County Illinois. *See also* Paragraph #17 of Count I of the Complaint.

10. Upon information and belief, the balance of the debt owed to MECU on the second mortgage is \$51,043.01. *See* attached Exhibit B is a true and accurate copy of the Complaint to Foreclose Mortgage filed on or about March 18, 2016 in the Circuit Court of Kane County Illinois. *See also* Paragraph #14 of Count II of the Complaint.

11. The total amount owed to MECU on the first and second mortgage per the Complaint is \$406,022.09.

12. The Complaint to Foreclose Mortgage was filed by Christine M. Ryan of ESP Kreuzer Cores LLP as attorneys for Motorola Employees Credit Union.

13. On or about June 14, 2016, MECU filed a proof of claim in this case [Claim 5]. *See* attached Exhibit C is a true and accurate copy of the Proof of Claim filed by MECU in the instant bankruptcy proceeding.

14. This claim was filed by Christine M. Ryan of ESP Kreuzer Cores LLP as attorneys for MECU.

15. This claim indicates the total amount due is \$356,496.99 with the basis of perfection being the First and Second Mortgages on the real property.

16. Contrary to Bankruptcy Rule 3002.1 this claim does not itemize the amount of debt owed on account of MECU's first and second mortgage.

17. Pursuant to 11 U.S.C. §§ 506(a) & (d), a creditor would only have a secured claim to the extent of the value of the bankruptcy estate's interest in the property securing the claim. As a result, a creditor's lien is void to the extent it is not an allowed secured claim.

18. Moreover, a junior lien holder would only have a secured claim to the extent the fair market value of the secured asset exceeds the amount of the lien held by the primary lien holder.

19. Where the junior mortgage is wholly unsecured, it should not be allowed as a secured claim, and that the mortgage lien may be stripped off. *In re Havel*, 2002 WL 31944059 (Bankr. S.D. Ill. 2002); *In re Mann*, 249 B.R. 831, 840 (1st Cir. BAP 2000); *In Re Pond*, 2001 252 F.3d 122 (2nd Cir. 2001); *In Re MacDonald*, 205 F. 3d 606 (3rd Cir. 2000); *Bartee v. Tara Colony*

Homeowners Assoc., 212 F. 3d 277 (5th Cir. 2000); *In Re Lam*, 211 B.R. 36 (9th Cir. BAP 1357); *In Re Tanner*, 217 F. 3d 1357 (11th Cir. 2000).

20. Given that MECU's first mortgage claim in the amount of \$354,979.08 exceeds the fair market value of the real estate of \$316,000.00, MECU does not have an allowed secured claim for its second mortgage pursuant to 11 U.S.C. §506(a).

21. Therefore the debt owed to MECU on the second mortgage is fully unsecured and shall be treated as a general non-priority unsecured claim in the underlying Chapter 13 proceeding and avoided upon discharge.

WHEREFORE, the Debtor, Tanveer A. Khan, prays this Honorable Court enter an Order as follows:

A. Determining that the Fair Market Value of the Real Estate commonly known as 2321 Loop Road, Algonquin, Illinois 60102 is \$316,000.00;

B. Determining that the debt owed to Motorola Employee Credit Union based on the its second mortgage on the real estate shall be treated as general non-priority unsecured claim and shall be avoided upon entry of discharge in the underlying Chapter 13 proceeding;

C. For any other and further relief as the Court may seem just and proper.

Dated: September 29, 2016

Respectfully submitted,

/s/ James J. Haller

James J. Haller

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